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## **'1867 and all that': 'Federalism' and Union in Britain and Canada**

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# **‘1867 and all that’: ‘Federalism’ and Union in Britain and Canada**

**James Kennedy**

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In 1867 Walter Bagehot published *The English Constitution*, in which he extolled the virtues of the British system of government, a system that had evolved over centuries of political development, producing a series of stable and distinctive institutions. In the same year the Westminster parliament passed the British North America (BNA) Act thereby inaugurating the Canadian Confederation.<sup>1</sup> While not explicit in either ‘constitution’, both Britain and Canada were also ‘unions’, multinational states which had been formed through the incorporation of nationalities. By the end of the nineteenth century, nationalists in Scotland and Québec questioned the degree to which these constitutions adequately accommodated their respective nations. This has been a recurrent theme ever since.

This essay contends that the specific character of the political unions of Canada and Britain can tell us much about the ebb and flow of sub-state political nationalism in these states, most especially in Scotland and Québec. In particular, the quality of the ‘federalism’ employed by these unions is identified as key to explaining the relative success of these states. The form that federalism takes is found to be particularly determinative of the demands made by political nationalists. Crudely, Scotland has enjoyed an informal federalism arising from a cultural recognition of its national status; in contrast a formal, constitutional federalism has given Québec significant political voice within the Canadian Confederation, yet recognition of its cultural distinctiveness has been fraught. The paper has four parts: the first reviews the concept of federalism, the middle sections provide an overview of its practice in the cases of Canada and Britain, identifying its relationship to the rise and fall of political nationalism; some reflections on the architecture of these unions are offered by way of conclusion.

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<sup>1</sup> It is worth noting that 1867 also witnessed the formation of another union: the ‘Dual Monarchy’ of the Austro-Hungarian Empire.

## I Federalisms

Nineteenth-century liberal theory gave federalism a ringing endorsement. John Stuart Mill ascribed positive qualities to federalism; he praised federal systems for their pacifism and for their ability to harmonise trade (which would itself mitigate against war): 'it of course puts an end to war and diplomatic quarrels, and usually also to restrictions on commerce between the states composing the union'.<sup>2</sup> They were disposed to pacifism since 'a federal government has not a sufficiently concentrated authority, to conduct with much efficiency any war but one of self-defence'.<sup>3</sup> Above all federalism was a way of managing difference when people are unable to live under the same internal government. While difference could take many forms, Mill identified race, language, religion and diverging political institutions as being particularly important.<sup>4</sup>

But how does federalism operate in practice? Considerable conceptual confusion surrounds this question. Preston King's distinction between 'federalism' and 'federation' is a good starting point.<sup>5</sup> While federalism relates to an ideology or an ethos, federation refers simply to a type of political institution. The preponderance of literature on federalism has equated it with this latter sense. William H. Riker's 1964 classic study of 'federalism' exemplifies this. The definition of federalism is seen there as unproblematic since it is a 'precisely definable and easily recognisable constitutional artefact' demarcated by specific institutions: 'a government of the federation and a set of governments of the member units, in which both kinds of governments rule over the same territory and people and each kind has the authority to make some decisions independently of the other'.<sup>6</sup> Yet Riker's classification of liberal Canada and the United States, as well as communist Yugoslavia and the Soviet Union as federal systems based simply on their possession of a set of institutions—overlooking the actual practice of these states—suggests that institutions alone are a poor indicator of the practice of federalism.

William S. Livingstone is critical of this approach, since it is oblivious to the actual operation of institutions: 'whether a constitutional structure may properly be called federal depends not so much on the arrangement of the institutions within it as it does on the manner in which these institutions are

<sup>2</sup> John Stuart Mill, 'Considerations on Representative Government' in idem, *On Liberty and Other Essays*, John Gray (ed.) (1861; Oxford 1991), 443.

<sup>3</sup> Ibid., 443.

<sup>4</sup> Ibid., 435.

<sup>5</sup> Preston King, *Federalism and Federation* (London, 1982), 75.

<sup>6</sup> W. H. Riker, *Federalism: Origins, Operation, Significance* (Boston, 1964), xi, 5.

employed'.<sup>7</sup> Therefore Livingstone suggests that federalism can be understood in more sociological terms, as a way of articulating and protecting the federal qualities of a particular society, where diversity is grouped territorially.<sup>8</sup> Thus political systems are judged on how well they govern federal societies. Moreover the institutions-based approach fails to account for a certain fluidity in the life of institutions: a set of institutions may operate in a manner unintended by its originators and the successful operation of institutions may change over time, so that institutions which were successful in one period need not have the same success in another.<sup>9</sup> As we shall see the Union government in Canada in the 1840s and 1850s exemplifies the first, while the increasing strain on the local state in late nineteenth-century Scotland exemplifies the second.

In Livingstone's view federalism represents a compromise between the competing demands for autonomy and integration. The resulting constitution, therefore, will reflect their relative strengths: 'the federal system is thus an institutionalisation of the compromise between these two demands'. Thus federalism emerges as a relative, and not an absolute concept, a matter of degree and not of kind. The tools that federal systems employ to manage diversity likewise vary and are in part a reflection of the degree to which societies are segmented.<sup>10</sup> Thus there is no '*a priori* list of the characteristics of a federal system'.<sup>11</sup>

In deeply divided plural societies practices and conventions may take the form of a consociation, identified in Arend Lijphart's description of power-sharing arrangements practiced in the Netherlands.<sup>12</sup> Consociations are marked primarily through the existence of élite co-operation. This is a feature of the four key components which consociations are held to possess: government by a grand coalition is the most important, all groups are represented in a cabinet, a council/committee or among top office-holders; proportionality in political representation, the division of government employment and

<sup>7</sup> W.S. Livingstone, 'A Note on the Nature of Federalism', *Political Science Quarterly*, 67 (1952), 84. Livingstone's view of federalism influenced Paterson's 1994 study, which is also influential in this paper. Cf. Lindsay Paterson, *The Autonomy of Modern Scotland* (Edinburgh, 1994), 20.

<sup>8</sup> Livingstone, 'A Note on Federalism', 84–5.

<sup>9</sup> *Ibid.*, 84, 87.

<sup>10</sup> These tools include not only particular institutions but also the manner in which they are operated. *Ibid.*, 91.

<sup>11</sup> *Ibid.*, 88–91.

<sup>12</sup> A. Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, CT, 1977).

spending; a high degree of internal autonomy of groups; and with each group possessing a mutual veto over legislation which threatens its well-being.<sup>13</sup> Canada as both a unitary province and as a federation has possessed elements of each of these components allowing Lijphart to describe it as a 'semi-consociational democracy'.<sup>14</sup> Indeed the possession of a federation is thought to be particularly conducive to the success of consociations, where the political boundaries of federal structures mirror the territorial concentration of distinct groups.<sup>15</sup>

Clearly the federalisms that Livingstone and Riker depict are quite different. Riker's definition is based exclusively on institutions; his focus is on *federation* rather than the practice of *federalism*. In contrast Livingstone's focus is on political practices, which may or may not be expressed through a formal federation. Livingstone's view is not without controversy. Indeed, it is a view that many political scientists reject, believing that the term should be retained exclusively for an institutions-driven account. However the advantage of Livingstone's approach is to focus attention on how societies are actually governed rather than on how formal constitutions suggest that they are. This has particular implications for the cases of Scotland and Québec.

Britain is often thought to be the very hallmark of a unitary state, yet, as we will see, that state's relationship to Scotland took a form that was decidedly federal. John Stuart Mill gives authority to this conception of federalism, by citing the example of the Union between Scotland and England to demonstrate that a state need not proclaim itself as federal in order to exhibit federal qualities: 'a people may have the desire, and the capacity, for a closer union than one merely federal, while yet their local peculiarities and antecedents render considerable diversities desirable in the details of their government'. By avoiding the 'mania for uniformity' prevalent on continental Europe, Mill suggested that 'a totally different system of law, and very different administrative institutions, may exist in two portions of a country without being any obstacle to legislative union'; on the continent the assumption was that a distinctive legal system would require a distinctive government.<sup>16</sup>

Canada exemplified federal tendencies, yet its federalism was expressed differently: the practices of the pre-1867 Province of Canada were federal, despite its unitary character, and these practices continued following the

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<sup>13</sup> Ibid., 25.

<sup>14</sup> Ibid., 120–9.

<sup>15</sup> Ibid., 42–3.

<sup>16</sup> Mill, 'Considerations on Representative Government', 444–5.

constitution of Canada as a federation in 1867.<sup>17</sup> The cases of Canada and Britain suggest a distinction between a formal institutional federalism and an informal federalism, comprising a series of practices that recognise the federal nature of society. In the latter case a continuum exists between the simple recognition of a group through to the development of explicit consociational practices of power-sharing.<sup>18</sup>

Yet it is worth bearing in mind Robert Dahl's caution that on purely theoretical grounds no political unit is 'inherently more democratic or otherwise more desirable than others'.<sup>19</sup> What matters ultimately is whether political institutions and political practices are able successfully to meet the demands of governing multinational states. There are two issues in play here: does the formal provision of 'voice' within a political system engender 'loyalty' and thereby mitigate against 'exit'?<sup>20</sup> Michael Hechter argues that the institution of indirect rule through the form of a federation itself militates against political nationalism.<sup>21</sup> Alternatively is it necessary formally to institute federalism so long as there are political practices in place which recognise a group's cultural 'worth' and thereby avoid its misrecognition or non-recognition?<sup>22</sup> The next two sections seek to explore these issues in the context of Canada and Britain.

## II Canada

1867 is a critical juncture in the political development of Canada. It is from that date that the present Canadian constitution was established. However before examining Canadian Confederation it is also instructive to examine the system of government which preceded it, especially as it related to Québec. The French cession of New France to the British in 1763 brought a significant

<sup>17</sup> Mill suggested that federalism could be used to describe Canada's mid-nineteenth century relationship with Britain: it constituted the 'slightest kind of federal union', although not an equal federation, since while it possessed full power over its own affairs, it had little or no say in foreign policy. *Ibid.*, 449.

<sup>18</sup> Lijphart, *Democracy in Plural Societies*; Brendan O'Leary, 'An Iron Law of Federalism and Nationalism?', *Nations and Nationalism*, 7 (2001), 273–96.

<sup>19</sup> Robert A. Dahl, *Democracy, Liberty and Equality* (Oxford, 1986), 126.

<sup>20</sup> J. A. Hall, 'How Homogeneous Need We Be?', *Sociology*, 30 (1996), 163–71; cf. Albert O. Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge, MA, 1970).

<sup>21</sup> Michael Hechter, *Containing Nationalism* (Oxford, 2000).

<sup>22</sup> Charles Taylor, 'The Politics of Recognition' in Charles Taylor et al, *Multiculturalism: Examining the Politics of Recognition* (Princeton, N. J., 1994).

linguistic and religious minority into the British Empire. While recognition of this minority was not immediately forthcoming, two subsequent acts (the Québec Act of 1774 and the Constitution Act of 1791) sought to safeguard the French language, Roman Catholicism, as well as the French civil law, and crucially allowed Catholics to vote and stand for office, something not available to British Catholics until 1829. The latter Act also created the separate legislatures of predominantly English-speaking Upper and French-speaking Lower Canada. The structure of the colonial administration in Lower Canada mirrored the social cleavages in the colony: French Canadian liberal professionals dominated the elected Legislative Assembly whilst Anglophones and 'reliable' elements composed the appointed executive and legislative councils, where effective power was centred. Disaffection with this situation led to the *Patriote* rebellions of 1837–8, led by Louis-Joseph Papineau.

The defeat of the rebellions led to the creation of the Province of Canada, a political structure designed to resolve the problems caused by 'two nations warring within the bosom of a single state' within Lower Canada, which the Durham Report of 1839 had blamed for the *Patriote* rebellions.<sup>23</sup> While the Act of Union of 1840 sought to promote political assimilation by uniting Upper and Lower Canada (now Canada West and East respectively) under a single parliament, in practice the new political system was marked by negotiation and accommodation between British and French Canadians. It met all four of the characteristics associated with contemporary consociationalism, which Lijphart identifies above.

George-Etienne Cartier embodied the political mood of French Canadians through the mid-nineteenth century. Having participated in the 1837 rebellions, he went on to jointly head the government of the Province of Canada with John A Macdonald (1857–62), before becoming the most prominent French Canadian supporter of the Canadian Confederation of 1867 (which brought about the union of the British North American colonies of New Brunswick, Nova Scotia and Canada to form the Dominion of Canada). Cartier believed that Confederation would allow French Canadians to assert their influence outside Québec, particularly in the westward expansion of the Confederation, and he was closely associated with the formation of the Canadian Pacific Railway, Canada's first transcontinental railroad and the engine of the drive westwards.

The sociological conditions were certainly favourable to the institution of a federal constitution. The relative peace of North America (the United

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<sup>23</sup> C.P. Lucas (ed.), *Lord Durham's Report on the Affairs of British North America* (3 vols.; London, 1912).



States' civil war exempted) meant that a decentralised system of government could be permitted. This stood in marked contrast to the state rivalries which characterised continental Europe and promoted highly centralised states. Federation also had the advantage of allowing the effective governance of a geographically dispersed population and, perhaps most crucially from a French Canadian perspective, allowed for the preservation of francophone Québec's 'distinct society'. By the late nineteenth century, however, French Canadian political élites had become increasingly concerned about the position of French Canadians within Confederation. In 1867 one province in four had been French-speaking, however as Confederation expanded and admitted additional provinces the ratio was reduced to one province in seven by 1910. This prompted competing interpretations of Confederation itself.<sup>24</sup> Among English-speaking Canadians Confederation was interpreted as a political compact of provinces, while French-speakers increasingly viewed it as a compact of peoples:

The Fathers of Confederation set themselves a two-fold purpose. First, they wanted to rid the Central Government of such business that could better be adjusted by the local authorities. Second, they wanted the two main elements of the Canadian people—French and English—to enjoy equal rights under the constitution.<sup>25</sup>

It was in this context that a small group of influential *Nationalistes* inspired by Henri Bourassa argued for a bi-national Canada. While Bourassa had come to prominence asserting Canadian sovereignty in response to British imperial demands, the *Nationalistes'* domestic vision of Canada was just as important. Their concerns were existential in character. Schooling crises outside Québec curbed the use of French as a language of instruction. Most notable were the schooling crises in Manitoba in the 1890s and in Ontario following the imposition of Regulation 17 by the Ontario Provincial government in 1912, which infamously sought to restrict both the use of French as a language instruction and as a subject of study, a move which was aimed directly at Ontario's fast-growing francophone population. In part these controversies were a response to significant demographic changes taking place in these provinces; the result of an unprecedented influx of non-francophone immigrants who had little

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<sup>24</sup> Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity* (Toronto, 1997).

<sup>25</sup> Olivar Asselin, *A Quebec View of Canadian Nationalism* (Montreal, 1909), 22.

interest in the 'historic' rights of French Canadians. Against this background the *Nationalistes* campaigned for a bi-national settlement in which French and British Canadians would be politically equal, through an arrangement that approximates contemporary consociationalism. In doing so they sought the resurrection of arrangements which had proven successful during the period of the Province of Canada. In their campaigns the *Nationalistes* promoted a French-speaking nation wider than the confines of Québec, which incorporated French-speaking populations to the east and west in New Brunswick, Ontario and Manitoba. Unable to attract significant support among English-speaking Canadians, this vision of pan-Canadian nationalism ultimately failed. The Conscription Crisis of 1917 in which conscription was imposed on Québec despite its strong opposition, underlined the rift between English and French-speaking Canada.<sup>26</sup>

The failure of the federal state to respond adequately to these concerns directly led to the rise of the conservative and Québec-centred nationalism of the priest-historian, Lionel Groulx. This was an ideology which glorified Catholic rural Québec against modernist materialism; it was promoted in the interwar period by journals such as *l'Action française*, later *l'Action nationale*, and influenced Maurice Duplessis and his Union Nationale (UN), which dominated Québec's provincial politics from 1944 to 1960. The UN had been returned to power in a wave of nationalism generated by a second Conscription Crisis in 1944. During the 1950s Duplessis resisted federal government social programmes in the name of provincial autonomy and continued to defer to the Catholic Church in the realm of social policy. At the same time he oversaw the business-friendly industrialisation of Québec. These policies mobilised both liberals and progressive neo-nationalists in their shared opposition.<sup>27</sup>

The election of Jean Lesage's provincial Liberal party in 1960 ushered in a period of reform, known as the 'Quiet Revolution', in which the government sought to catch-up with the rest of the developed world socially, economically and politically. Crucially it was the provincial Québec state which took the lead role in each of these areas. To some, notably René Lévesque, a prominent journalist and energy minister under Lesage, the progress achieved suggested that Québec could accomplish still more as an independent state. In 1968 Lévesque founded the Parti Québécois (PQ) with its platform of

<sup>26</sup> James Kennedy "A Switzerland of the North?" The *Nationalistes* and a Bi-national Canada', *Nations and Nationalism*, 10 (2004), 499–518.

<sup>27</sup> Michael Derek Behiels, *Prelude to Quebec's Quiet Revolution* (Montreal, 1985).

'sovereignty-association', in which Québec would be politically independent but would remain economically integrated with the rest of Canada. The PQ came to power within eight years of its formation. During its first term of office it passed significant language legislation and held a referendum on sovereignty in 1980, losing by 40% to 60%. It lost power in 1985, after a second term in office, and went into a period of retrenchment.

However the failure to ratify the Meech Lake Accord in 1987 revived the PQ's fortunes. Québec felt alienated since Prime Minister Pierre Trudeau had 'repatriated' the Canadian constitution in 1982, despite having failed to secure the approval of the Québec government. Meech Lake was an attempt on the part of new Canadian Prime Minister Brian Mulroney and Québec Premier Robert Bourassa to bring Québec back within the constitutional fold. The chief means by which this was to be accomplished was the inclusion of a clause recognising Québec as a 'distinct society'. This proved to be a hugely controversial measure outside Québec, angering both the indigenous First Nations and regionalist sentiment in the Canadian West. The failure of the Meech Lake Accord to gain ratification was deeply felt in Québec; the perception was that this was a rejection of Québec's national distinctiveness. It had the immediate effect of soaring poll support for both the PQ and its sovereignty platform. Notwithstanding the attempt to broker a new settlement (the Charlottetown Accord in 1992), it was this initial sense of rejection which led ultimately to the election of the PQ in 1994 and the closeness of the referendum on sovereignty the following year: the 'Yes' side narrowly lost by 49.9% to 50.1%.

Politics in Québec since the referendum have focused less on constitutional matters. Yet the three main parties all adopt a nationalist stance, claiming to protect Québec and its interests. The Parti Libéral du Québec (PLQ) has been in government since 2002. The breakthrough success of the conservative Action Démocratique du Québec (ADQ) in the 2006 provincial election, coming second to the PLQ and relegating the PQ to third place, may partly be explained by its moderate nationalist position (it was a member of the 'Yes' campaign in the 1995 referendum on sovereignty), which captures the mood of current Québécois politics. Federal politics has recently had an impact in Québec: the rise of the Conservative party has once again made Québec competitive in federal elections. It is perhaps this that lies behind the Canadian House of Commons' parliamentary motion in 2007, with the support of the nationalist Bloc Québécois, which took the unprecedented step of declaring that the Québécois form a nation within a united Canada. The parliamentary

motion which passed by 266 votes to 16 was largely symbolic since it carried no legal weight and promised Québec no additional powers. However it was precisely the demand for cultural recognition, rather than political voice that this symbolic gesture addressed.

Canada since 1867 has constituted a federation, and as a result Québec has enjoyed significant political voice. Yet political rule has not always taken a 'federal' form: schooling and conscription crises in the late nineteenth and early twentieth centuries respectively and the more recent attempts to re-write the constitution are cases in point. These have provided the ire to provoke first French Canadian then Québécois nationalism. Provincial politics too has played its part, notably in the advent of the Quiet Revolution and the rise of the PQ. This story contrasts with that of Britain where Scotland has only recently acquired significant political voice.

### III Britain

Scotland's formal independence was brought to an end with its Treaty of Union with England in 1707. In exchange for access to imperial markets Scotland's political élite negotiated a legislative union with England. As a result, in Nairn's choice phrase it became a 'decapitated national state' retaining many of the trappings of formal statehood, namely, a legal system, an education system and a national church (the Presbyterian Church of Scotland).<sup>28</sup> Together with a distinctive system of local government, this 'holy trinity' of institutions formed the nucleus of governance through the eighteenth and early nineteenth centuries. For all practical purposes the Union left the daily governance of Scotland largely untouched. The institutions that mattered had been left unaffected by union.

However the political structure of the British state began to change in the mid-nineteenth century, first due to the exigencies of war and an expanding empire and, as the century progressed, as a result of the demands for improved housing, health and sanitation created by a growing and increasingly urban population. In both instances the result was the increasing centralisation of power at Westminster. In the 1850s the National Association for the Vindication of Scottish Rights emerged to champion the maintenance of strong local government. In the era between the First and Second Reform

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<sup>28</sup> Tom Nairn, *The Break-Up of Britain: Crisis and Neo-Nationalism* (London, 1977), 129.

Acts, this was an élite movement which mobilised a privileged segment of Scottish society to demand not more but less central government intervention.<sup>29</sup>

But by the late nineteenth century more rather than less government intervention was the order of the day. In the 1880s it was the Scottish Home Rule Association which proposed devolution as the solution to Scotland's 'legislative neglect'. 'Home Rule all Round', in which Britain would become a formal federal system also gained support. However it is quite wrong to suggest that the demand for Scottish home rule was simply a by-product of Irish agitation for home rule.<sup>30</sup> The Young Scots' Society took up the mantle of home rule in the first decade of the twentieth century. This was a society which was closely affiliated with the politically dominant Liberal party and which promoted a dual campaign of home rule and radical social reform. The Young Scots were responding to what in contemporary parlance would be referred to as a 'democratic deficit': during this period increasingly powerful boards or 'quangos' administered social legislation in Scotland largely outside democratic scrutiny. Moreover they claimed that only limited attention was given to Scottish matters at Westminster with the result that progressive legislation was effectively stalled, or inappropriate measures imposed:

Scotland comes as an afterthought. The proposed legislation is framed by an English minister with the assistance of English lawyers, and it is based on English experience, custom and law. A clause at the end makes it applicable to Scotland, and thus the Scottish people have to make the best they can of a measure that under their different experience, custom and law, is wholly unsuitable and often worse than useless.<sup>31</sup>

Political pressure for home rule had some success, namely to administrative devolution. Yet there is irony in that this success effectively undercut the demand for legislative devolution. The Young Scots argued that the embryonic welfare state should be distinctly Scottish in order to respond effectively to Scotland's distinct needs. The success of the fight to ensure Scottish control

<sup>29</sup> Graeme Morton, *Unionist Nationalism: Governing Urban Scotland, 1830–1860* (East Linton, 1999).

<sup>30</sup> cf. Christopher Harvie, *Scotland and Nationalism: Scottish Society and Politics 1707–1994* (London, 1994).

<sup>31</sup> Young Scots' Society, *Manifesto and Appeal to the Scottish People on Scottish Home Rule* (Glasgow, 1912), 2.

over welfare provision had paradoxical implications for the campaign for home rule. Far from paving the way for the imminent recall of the Scottish parliament, administrative control over welfare effectively undermined the urgency of the demand for legislative devolution. The example of National Insurance in 1911 is instructive. Its introduction received this favourable review from a home rule supporting publication:

The striking success of the scheme on this side of the Border is a magnificent tribute to the administrative genius of the Scot. . . . '*Scotland so far as National Insurance is concerned, is under Home Rule*'. As a result, the percentage of persons who are insured is higher in Scotland than in England, Ireland or Wales. The vast organisation which achieved this distinction could never have been worked from an office in London.<sup>32</sup>

This substantiates Lindsay Paterson's claim that welfare legislation was not only a response to socialist agitation, but that 'it was equally a displacement of nationalist pressure for a separate legislature'.<sup>33</sup>

This was the pattern that was followed most especially in the immediate post-World War II period: distinctively Scottish institutions administered the growing welfare apparatus in Scotland. The institutions of administrative devolution were various. Core components included the Scottish Office and Scottish Education Department, both established in the 1880s and initially headquartered in London before moving to Edinburgh in 1939. These departments were headed by the Scottish Secretary, who attained full cabinet rank and became Secretary of State for Scotland in 1926. Equally central was the Scottish Grand Committee, formed by Westminster Scottish MPs to consider Scottish legislation, and the Scottish Select Committee which oversaw the workings of the Scottish Office. In James Kellas' view these elements constituted a 'Scottish political system'; a view countered by Midwinter, Keating and Mitchell who emphasise the dominance of the British central state during this period.<sup>34</sup> In the post-war era this state-led social and economic re-generation enjoyed considerable success. However this political system came under strain

<sup>32</sup> *Scottish Nation*, November 1913, 13 (my emphasis).

<sup>33</sup> Lindsay Paterson, 'Scottish Autonomy and the Future of the Welfare State', *Scottish Affairs*, 19 (1997), 57.

<sup>34</sup> James G. Kellas, *The Scottish Political System* (Cambridge, 1984); Arthur Midwinter, Michael Keating and James Mitchell, *Politics and Public Policy in Scotland* (London, 1991).

during the 1960s and 1970s, as successive British governments identified the regions as requiring additional attention. In this regional planning Scotland was identified as a 'problem'. Thus the way in which Scotland was 'institutionally defined' mattered and had implications for political nationalism, giving legitimacy to claims that 'Britain isn't working'.<sup>35</sup>

It was during this period that the Scottish National Party (SNP) enjoyed particular success, the product of rising expectations among a young generation frustrated by Britain's economic and political stagnation and buoyed up by the discovery of North Sea oil. 'It's Scotland's Oil!' ran the SNP's most successful campaign. The general election results of 1974 saw the party secure seven then eleven MPs in the February and October elections respectively. The failure of the home rule referendum in 1979 began a period of demobilisation, however. It was Margaret Thatcher who revived the SNP's fortunes, and more generally that of the home rule cause, in the late 1980s. The generalised sense that the Conservative administration was a government without popular support in Scotland was given concrete form with the imposition of the Poll Tax in 1988, a local government tax introduced one year ahead of the rest of the United Kingdom. Through the period of Thatcher's rule a class of state-employed professionals, including local government and NHS employees, had been mobilised to join the home rule movement; in other words, those directly affected by attempts to reform the public sector.<sup>36</sup>

The 1997 landslide of New Labour in the United Kingdom also heralded a new era for Scottish politics. Within months of taking office the new government issued a white paper and launched what was to be a successful referendum campaign. Two years later Scottish elections were held and the first Scottish parliament for almost three hundred years met. Curiously, in the immediate period following the (re-)establishment of the Scottish parliament a sort of national paralysis set in, in which the devolved institutions failed to meet popular aspirations. In part, this was the result of the decade-long anticipation of devolution which had generated high expectations. This was combined with a particular set of circumstances which affected the devolved administrations: the sudden and tragic death of the first First Minister, Donald Dewar; the perceived dithering of the short-lived administration of his successor, Henry McLeish; and the competent though uninspiring leadership of Jack McConnell. Despite its legislative achievements, there was an impression

<sup>35</sup> John Breuilly, *Nationalism and the State* (2<sup>nd</sup> edition; Chicago, 1994), 324–5.

<sup>36</sup> Jonathan Hearn, 'Identity, Class and Civil Society', *Nations and Nationalism*, 8 (2002), 15–30.



that the devolution settlement was merely a more elaborate mechanism of local government, a charge that opponents of devolution had long contended. In other words while Scotland now enjoyed a formal political voice there was a sense that its new political institutions were failing to secure its cultural recognition.

The minority SNP administration elected in May 2007 appears to have set itself the task of raising the profile of the devolved administration in Scotland to attain a national stature. This is epitomised above all by the symbolic name change of 'Scottish Executive' to 'Scottish Government'. In this sense there is an attempt to acquire a cultural and political recognition. Tellingly this has also been seen in the presentation of Alex Salmond as First Minister: the first meeting between the Scottish First Minister and the British Prime Minister was carefully staged in 'neutral' Belfast against the backdrop of the meeting of the British-Irish Council.

Since the late nineteenth century political nationalism in Scotland has largely been devoted to the achievement of a formal political voice, in the form of legislative devolution, and only more recently in substantial, but not majority, support for independence. Administrative devolution initially offset support for legislative devolution. However, the centralising policies of the Conservative government, effectively undercutting local autonomy in Scotland, were the catalyst which resulted in home rule. Since 1999 the failure of successive devolved governments to assume a national mantle allowed the SNP to attain office claiming that it would 'fight for Scotland'.

#### **IV Conclusion: The 'architecture of federalism'**

The architecture of federalism matters and has implications for the successful accommodation of sub-state nationalism: federalism has been identified in both Britain and Canada. Yet it took a distinctive form in each context.

Since 1867 Canada has possessed a formal constitutional federalism, yet informal federal practices characterised the preceding Province of Canada, and have continued to be practiced since Confederation. In his widely acclaimed essay, 'The Politics of Recognition', the Canadian philosopher, Charles Taylor proposes that what lies behind much 'identity politics' is recognition or its absence.<sup>37</sup> Confederation ensured that Québec had a formal political voice.

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<sup>37</sup> Taylor, 'The Politics of Recognition'.



Nationalists have been particularly effective in amassing a range of powers in the Québec state, whereby Québec possesses more powers than any other corresponding sub-state in the developed North<sup>38</sup> yet curiously cultural recognition has been denied. This was most clearly seen in the failure to ratify the Meech Lake Accord, which would have ensured official recognition of Québec as a 'distinct society'. It remains unclear whether the federal parliamentary motion passed in 2007, acknowledging the Québécois to be a nation, will have any long-term impact in this regard.

In contrast, Scotland until 1999 enjoyed cultural recognition, given substance through a range of informal and formal practices which acknowledged its national status; however, it lacked formal political voice in the institutionalised form of an executive and legislature. The creation of a devolved parliament marked a break with previous governance, captured well by Tom Nairn: 'a parliament is not in fact just another institution in civil society, devoted to the completion or extension of "low politics". . . it implies a qualitative shift to the "high politics" of last resort responsibility and extra-local status'.<sup>39</sup> This transition was not straightforward, however, since the acquisition of a political voice alone is not, by itself, sufficient; it also requires an accompanying cultural recognition that the devolved institutions are national institutions.

There is thus a phenomenological distinction between Scottish and Québécois nationalism. In Scotland political nationalism has sought a formal institutional voice within, and more recently outside the British political system. Scotland has historically enjoyed an informal cultural recognition of its national distinctiveness. In Québec it is the demand for the formal cultural recognition of difference that lies at the core of its political nationalism. For the PQ this requires sovereignty, while for others a range of options have been advanced such as bi-nationalism, autonomy and 'distinct society' status. These demands are distinct and reflect the contrasting ways in which federalism has been expressed in Britain and Canada.

Federalism has been found to be a relatively malleable set of tools able to provide voice through the formal institution of federations and recognition through the adoption of federal practices.<sup>40</sup> Both elements are necessary in order to meet the aspirations of sub-state nations. This has resonance with the findings of Brendan O'Leary that formal federations with significant national

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<sup>38</sup> The list here includes Scotland but also Catalonia, the Basque Country, Flanders and Waloonia.

<sup>39</sup> Tom Nairn, *Faces of Nationalism: Janus Revisited* (London, 1997), 237, n.18.

<sup>40</sup> Riker, *Federalism*; Livingston, 'A Note on the Nature of Federalism'.

minorities need to be accompanied by informal practices, most especially consociationalism.<sup>41</sup> In other words, both formal and informal federalism are required.

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<sup>41</sup> O'Leary, 'An Iron Law of Federalism'.